IN THE HIGH COURT OF DELHI

Crl.M.C.No. 5632/2005

Vijay Manchanda ..... Petitioner
! through: Mr. R.K.Gosain, Advocate

VERSUS

$ M/s. Graphline Computer (P) Ltd. ..... Respondent
^ through: Mr.Pawan Sharma, Advocate
for the State.
Mr. Abhijeet Gulati, Advocate for R-1.

% DATE OF DECISION: 19.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Petitioner seeks quashing of a criminal complaint filed by the first respondent under Section 138 read with Section 142 of the Negotiable Instruments Act 1881 and the summoning order dated 22.3.2003 inter alia alleging that the complaint does not disclose an actionable cause against the petitioner and that there was no material before the learned M.M. to summon the petitioner. 2. As per the complaint lodged by respondent No.1 accused name is M/s.Bharat Fabricators through the petitioner.

3. It is stated in the complaint that the accused

purchased computer peripherals and to clear payment for the purchase made issued cheque No.168712 dated 21.9.2002 in sum of Rs.84,000/- in favour of the complainant.

4. It is stated in the complaint that when presented for encashment the bank on whom cheque was drawn returned the same with the advice 'funds insufficient'.

5. Petitioner alleges no concern with the cheque or M/s.Bharat Fabricators.

6. In the reply filed to the petition, complainant has changed its version. It is stated in sub-para (d) of para 2 of the reply filed to the instant petition that the petitioner is the director of Kanpav Overseas Pvt. Ltd. and that he has acted in connivance with one Mr.Amar Singh Gupta who has issued the cheque in question. It is further stated that the petitioner as also Mr.Amar Singh Gupta jointly took delivery of the goods sold and in respect whereof the cheque was issued. It is stated that the bill was actually raised in the name of Kanpav Overseas Pvt. Ltd. That Amar Singh Gupta is the authorized signatory to the bank account maintained by Kanpav Overseas Pvt. Ltd. That petitioner is the director of the said company.

7. If that was the position, in the complaint, principal accused had to be M/s.Kanpav Overseas Pvt. Ltd. Requisite averments have to be made against the petitioner in relation to his being a director and the person in charge and in control and

responsible to the company for the conduct of its business.

8. In view of the reply filed by the respondent it is obvious that the complaint filed by the respondent against M/s.Bharat Fabricators through the petitioner does not disclose any cognizable offence.

9. I note that pursuant to the complaint, taking cognizance thereof, on 22.3.2003, learned Metropolitan Magistrate proceeded to summon the petitioner to face trial in the complaint filed by the respondent. The summoning order has therefore to be quashed.

10. Petition stands disposed of quashing the summoning order dated 22.3.2003 as also criminal complaint No.87/1 of 2003 titled 'M/s.Graphline Computers (P) Ltd. vs. M/s.Bharat Fabricators'.

11. No costs.

12. Dasti.

September 19, 2007 **PRADEEP NANDRAJOG, J.**
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